



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

August 30, 1990

Robert Bernstein, M.D., F.A.C.P.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR90-419

Dear Dr. Bernstein:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9555.

The Texas Department of Health received an open records request from one of its employees for certain records pertaining to the employee's job performance and to the department's evaluation of applicants for promotion to a particular position within the department. You contend that these records come under the protection of section 3(a)(11) and the informer's privilege aspect of section 3(a)(1) of the Open Records Act.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's deliberative process. Open Records Decision No. 464 (1987); see also Open Records Decision No. 466 (1987) (copy enclosed). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

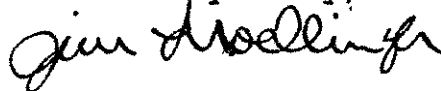
We have marked those portions of the inter-office memoranda contained in Attachments A and D that you may withhold pursuant to section 3(a)(11). Although you may also withhold pursuant to section 3(a)(11) the scores given by evaluators to responses given by job applicants during

the interview process, the responses themselves do not consist of the type of information section 3(a)(11) was intended to protect; consequently the individual responses must be released.

You contend that section 3(a)(1) of the Open Records Act, pursuant to the informer's privilege, excepts from public disclosure all complaints the department received concerning the employee/requestor. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 515 (1989) (copy enclosed). There is no report of such a violation in the requested material; consequently you must release the complaints.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-419.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/le

Ref.: ID# 9555

Enclosures: Open Records Decision Nos. 515, 466
Marked documents

cc: Larry Rayford
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